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Written statement* submitted by the International Human Rights Association of American Minorities (IHRAAM), a non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[23 August 2018]

* Issued as received, in the language(s) of submission only.

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Attempt to Repeal Article 35A by the Nationalist Government of India Which Is Unconstitutional and Breaches the Spirit of the UN Resolutions on the Indian administered Jammu and Kashmir

Introduction

The Indian administered Jammu & Kashmir (J&K), is yet to see an acceptable and just resolution of the long-standing issue since 1947. The United Nations (UN), through its resolutions, has recognised Kashmiris right to self-determination.

On 13 August 1948, the UN Security Council passed a resolution which, inter alia, states: *"The Government of India and the Government of Pakistan reaffirm their wish that the future status of Jammu and Kashmir shall be determined in accordance with the will of people".*

Regrettably, the people of J&K have been persistently denied this right by the Government of India for the last 70 years. The Indian leadership made unreserved commitments to the Kashmiris on this issue including Mohandas Ghandi and Jawahar Lal Nehru (the first Prime Minister of India).

The Government of India has attempted to legitimise its occupation by imposing a series of legislations upon the people of Jammu and Kashmir.

Attempt to repeal Article 35A of the Constitution India extending special protection to J&K and its state subjects

ARTICLE 35A of Indian constitution says that no law for J&K, existing or future, shall be void as being violative of the fundamental rights if it touches "permanent residents" or confers on them "special rights" on government jobs, acquisition of immovable property, settlement in the state or rights to scholarship or other forms of government aid.

Historically in 1922, the princely state's council of ministers imposed curbs on employment of outsiders in administration, as well as *"all grants of land for agricultural and house-building purposes and grant of houses and other state property shall be made to state subjects only."* A notification in April 1927 defined them.

The basic principles committee set up by the J&K constituent assembly, presented its report on 3 February 1954 - *"All these fundamental rights should be subject to the overriding condition that: (i) no law of [J&K] relating to [J&K] subjects to be hereafter called 'permanent residents' and regulating their rights and privileges; and (ii) no law hereafter to be made by the [J&K] legislature defining the permanent residents and conferring on them special rights and privileges in relation to acquisition and holding of property in [J&K] or in the matter of employment under [J&K] and imposing restrictions on citizens other than permanent residents for settling within [J&K] should become void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Part III of Constitution of India."*

On 11 February 1954, the report of the drafting committee was presented to the constituent assembly, in which an annexure set out the provisions of the Indian constitution, besides Articles 1 and 370, that should apply to J&K. Obviously, this annexure had been settled with the Indian government. Article 35-A was among them. On 15 February 1954, it was moved that a copy of the annexure be sent to the Indian government "for appropriate action". On 17 May, 1954, the president's order under Article 370 followed, inserting, among other provisions, Article 35-A in the constitution.

It is part of a compact between J&K and India, the primary reason being J&K is the UN pending issue. Repeal of Article 35-A — which is constitutionally impossible — will not alter the situation, for the 1927 notification is part of the J&K Constitution.

Article 35A special protection provoked the ire of ultra-right-wing nationalist parties, which seek the unequivocal integration of J&K into the Indian union. The unitary concept of nationalism that such organisations subscribe to challenge the basic principle that the nation was founded on - democracy. In this nationalist project, one of the forms that the nullification of past and present histories take is the subjection of religious minorities to a centralised and authoritarian state. The unequivocal aim of the supporters of the integration of J&K into the Indian union was to expunge its special protection endowed on J&K by India's Constitution primarily recognising the unresolved status of J&K.

Article 35A is not a mere executive order under Article 370 but is itself a constitutional provision, a compact recorded in both constitutions. No court can ignore this.

A writ petition filed in the Supreme Court of India by NGO - *We the Citizens* challenges the validity of Article 35A. This has the backup of the Indian nationalist government. The petition, in the main argues, that Article 35A is against the *"very spirit of oneness of India"* as it creates a *"class within a class of Indian citizens"*.

It is abundantly clear that the nationalist government of India is adamant to repeal Article 35A (including Article 370). The Kashmir issue is linked with it and the Kashmiris individuality existence depends on its survival.
The Supreme Court of India has ad nitted the petition and this is disturbing.

Conclusion

Kashmiris, exercising their human rights, wish to register their dismay and protest against India's nationalist government's misadventure.

IHRAAM calls on the President and members of the UN Human Rights Council, the High Commissioner for Human Rights and all other relevant UN mandates to intervene in this unconstitutional act and blatant breach of the spirit of the UN Resolutions on the disputed territory of Jammu and Kashmir.